IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

WRIT PETITION NO.69 OF 1993

Shri Devdasan Devamoni,
c/o. Rashtriya Mill Mazdoor
Sangh, Mazdoor Manzil,
Parel, Bombay-400 012. Petitioner

vs.

1. Jam Manufacturing Mills (UC)
A Unit of NTC (5M) Ltd. (AC),
Lal Baug, Parel,
Bombay-400 012.

2. National Textile Corporation
(South Maharashtra) of India,
Appollo House,
Bombay-400 013. Respondents

Mr.S.N.Deshpande for the petitioner.

Mr.Shailesh More i/b.Mr.S.M.Naik for the respondents.

CORAM : R. M. LODHA &
J.P. DEVADHAR,JJ.

DATED : 11th August 2005

ORAL JUDGMENT (Per R.M.Lodha,J.)

Heard.

2. By the communication dated 14th December 1992, the petitioner was informed that on his attaining the age of 60 years on 15th January 1993, he would stand retired from service with effect from 16th January 1993. The petitioner has invoked extraordinary jurisdiction of this Court under Article 226 of the Constitution of India in challenging the said order.

3. The only contention of the learned counsel for the

petitioner is that the petitioner, at the relevant time, was holding Technical and Supervisory post having basic salary exceeding Rs.1000/- per month and, therefore, was not an employee within the meaning of Bombay Industrial Relations Act, 1946 (Fort short, 'BIR Act') and Model Standing Order 26-A was not applicable to the employees not covered under the BIR Act. The learned counsel would thus submit that by superannuating the petitioner on his attaining the age of 60 years relying upon clause 26-A of Model Standing Orders is bad in law.

4. The communication dated 14th December 1992 reads thus:

> "JAM MANUFACTURING MILLS (U.C.)
> T.C.(S.M.) LTD.(A.C.)
> Lalbaug, Parel, Bombay-400012.
>
> Ref.No.JM/Record/92/2027 Date: 14-12-92
>
> Shri Devdasan Devamani,
> Super Senior Assistant,
> Department Weaving.
>
> Dear Sir,
>
> Sub: Order of Retirement from service.
>
> . As per our record, we find that you will be reaching the age of superannuation (60 years) on 15-1-1993. .
>
> . You are hereby informed that you shall stand compulsorily retired from service w.e.f. 16-1-1993, on attaining the age of 60 years as provided in Clause 26(A) of Model Standing Orders applicable to employees other than Operatives.
>
> . The last working day would be Friday the

15th January 1993 which would be treated as the final closing date.

. We wish you a happy and peaceful retired life.

. Thanking you,

Yours faithfully,
For Jam Manufacturing Mills (U.C.)
Sd/-
General Manager."

5. That the petitioner was well aware that he would retire on his attaining the age of 60 years is clearly reflected from the representation made by him on 01.10.1992 to the first respondent. The representation dated 01.10.1992 was made by the petitioner much before the impugned communication dated 14.12.1992 was received by him. In his representation he stated thus-

" I, the undersigned, am working in your esteemed organisation for the past 14 years and going to retire on 31st January, 1993, having completed 60 years of age. ..... and I plead with you sir, to extend my service further for 3 years."

6. It is the case of the respondents 1 and 2 that the Model Standing Orders framed for employees other than the Operatives and clerks were uniformally accepted and acted upon as forming part of conditions of service of Technical and supervisory staff and, accordingly, the retirement age for Technical and supervisory staff was 60 years and the petitioner was fully aware of this condition of retirement. Though this stand set up by the respondents 1 and 2 in the reply affidavit has been controverted by the petitioner in the affidavit in

rejoinder, but as we have already indicated above that the petitioner was fully aware that the retirement age for Technical and supervisory staff was 60 years and it was for this reason that in his representation dated 01.10.1992 made to the first respondent he intimated that on his attaining the age of 60 years he would retire on 31.01.1992 but he prayed for extension of time. In these circumstances, we find no justifiable reason to disbelieve the stand set up by the respondents 1 and 2 in their reply affidavit that Model Standing Orders framed for employees other than the Operatives and clerks were accepted and acted upon as forming part of the conditions of the service of Technical and supervisory staff.

7. In the sur-rejoinder filed by the respondents 1 and 2 it has been stated that the age of retirement for Technical and supervisory staff and officers employed in the constituent units of the National Textile Corporation (South Maharashtra) Limited not covered by the provisions of the BIR Act/Standing Orders/Agreements etc. is 58 years and the age of retirement of the employees which were covered under the provisions of the BIR Act/Standing Orders/Agreements was 60 years. In this regard reference has been made to the resolution dated 4th September 1976. If we accept the argument of the learned counsel for the petitioner that the petitioner though belonged to Technical and supervisory

staff but was not an employee within the meaning of the BIR Act, the petitioner ought to have retired on his attaining the age of 58 years. As a matter of fact since the petitioner was covered under the provisions of BIR Act, he got the benefit of the Model Standing Orders applicable to the employees other than the Operatives and clerks and returned on his attaining the age of 60 years.

8. For what we have said above, we have no hesitation in observing that the present writ petition is wholly frivolous, misconceived and devoid of any substance and merit.

9. Before we close, we may refer to the judgment of the Supreme Court in the case of Delhi Cloth and General Mills Ltd. v. Shambhu Nath Mukherjee, **1984 LABOUR INDUSTRIAL CASES 1743** relied upon by the learned counsel for the petitioner. In paragraph 10 of the report, the Supreme Court observed that having regard to the circumstances of the case it was not necessary to decide the contention whether there was any rule of retirement applicable to the deceased workman. The Supreme Court further observed that the finding of the Labour Court was confined to the facts obtaining in that case and not as a precedent that as far as the deceased workman was concerned there was no rule under which he could have retired or superannuated at the age of 58 years. In

what the Supreme Court had observed in paragraph 10, it is clear that the judgment was confined to the facts of its own case. Even otherwise we find no relevance of this judgment to the facts of the present case.

10. Writ petition is dismissed. We would have ordinarily imposed cost on the petitioner for filing such frivolous writ petition, but since he retired long back, we order the parties to bear their own costs.

(R.M. LODHA,J.)

(J.P. DEVADHAR,J.)